



January 17, 2008

SENATE BILL No. 43

DIGEST OF SB 43 (Updated January 15, 2008 7:00 pm - DI 52)

Citations Affected: IC 8-1.5; IC 13-11; IC 13-14; IC 13-20; IC 36-9.

Synopsis: Environmental matters. Requires, with respect to environmental rules subject to automatic expiration, the department of environmental management (IDEM) or the appropriate rulemaking board to publish a notice identifying which of the rules will be readopted. Requires IDEM or the board, on request of a person, to consider readoption of an environmental rule that IDEM or board proposes to allow to expire. Establishes procedures to prevent a county department of storm water management and a municipal works board from imposing fees in the same area for storm water management. Allows use of the state solid waste management fund to provide grants and loans to promote beneficial uses of technologies for the conversion of solid waste into energy or another useful product, and gives priority to grants and loans for technologies for the conversion of waste tires. Permits IDEM in providing the grants and loans to give that priority only if the balance in the waste tire management fund is insufficient to remove and dispose of one-half of the total number of waste tires located at unregulated tire sites.

Effective: Upon passage.

Gard

January 8, 2008, read first time and referred to Committee on Energy and Environmental Affairs.

January 16, 2008, amended, reported favorably — Do Pass.

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SB 43—LS 6265/DI 52+



January 17, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE BILL No. 43

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 8-1.5-5-7 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) The
3 acquisition, construction, installation, operation, and maintenance of
4 facilities and land for storm water systems may be financed through:
5 (1) proceeds of special taxing district bonds of the storm water
6 district;
7 (2) the assumption of liability incurred to construct the storm
8 water system being acquired;
9 (3) service rates;
10 (4) revenue bonds; or
11 (5) any other available funds.
12 (b) **Except as provided in IC 36-9-23-37**, the board, after holding
13 a public hearing with notice given under IC 5-3-1 and obtaining the
14 approval of the fiscal body of the unit served by the department, may
15 assess and collect user fees from all of the property of the storm water
16 district for the operation and maintenance of the storm water system.
17 The amount of the user fees must be the minimum amount necessary

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for the operation and maintenance of the storm water system. The assessment and collection of user fees under this subsection by the board of a county must also be approved by the county executive.

(c) The collection of the fees authorized by this section may be effectuated through a periodic billing system or through a charge appearing on the semiannual property tax statement of the affected property owner.

(d) The board shall use one (1) or more of the following factors to establish the fees authorized by this section:

- (1) A flat charge for each lot, parcel of property, or building.
- (2) The amount of impervious surface on the property.
- (3) The number and size of storm water outlets on the property.
- (4) The amount, strength, or character of storm water discharged.
- (5) The existence of improvements on the property that address storm water quality and quantity issues.
- (6) The degree to which storm water discharged from the property affects water quality in the storm water district.
- (7) Any other factors the board considers necessary.

(e) The board may exercise reasonable discretion in adopting different schedules of fees or making classifications in schedules of fees based on:

- (1) variations in the costs, including capital expenditures, of furnishing services to various classes of users or to various locations;
- (2) variations in the number of users in various locations; and
- (3) whether the property is used primarily for residential, commercial, or agricultural purposes.

SECTION 2. IC 13-11-2-250 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 250. "Waste tire", for purposes of IC 13-20-13, ~~and~~ IC 13-20-14, ~~and~~ IC 13-20-22, means a tire that is not suitable for the tire's original purpose.

SECTION 3. IC 13-14-9.5-4, AS AMENDED BY P.L.123-2006, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Except as provided in subsection (b), **with respect to the rules subject to expiration under this chapter**, the department or a board that has rulemaking authority under this title:

- (1) may readopt ~~at one (1) or more of the rules subject to expiration under this chapter~~ under one (1) rule that lists all rules that are readopted by their titles and subtitles only; **and**
- (2) **shall publish a notice in the Indiana Register identifying:**
 - (A) the rules, if any, that will be readopted; and
 - (B) the rules, if any, that will not be readopted.



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A rule that has expired but is readopted under this subsection may not be removed from the Indiana Administrative Code.

(b) If a person submits to the department or a board that has rulemaking authority under this title a written request ~~and stating~~ a basis for the request during the first comment period that a particular rule be readopted separately from the readoption rule described in subsection (a), the department or board must:

(1) ~~readopt~~ **consider readoption of** that rule separately from the readoption rule described in subsection (a); and

(2) follow the procedure for adoption of administrative rules under IC 13-14-9 with respect to the rule.

(c) If the department or board does not receive a written request under subsection (b) regarding a rule within the first comment period, the agency may:

(1) submit the **readoption** rule for filing with the publisher under IC 4-22-2-35 and publish notice in the Indiana Register that the agency has readopted the rule; or

(2) **for one (1) or more of the rules proposed to be readopted as part of the readoption rule described in subsection (a),** elect the procedure for readoption under IC 13-14-9.

(d) If a person submits to the department or a board that has rulemaking authority under this title a written request stating a basis for the request during the first comment period that a particular rule that the department or board does not intend to readopt as part of the readoption rule described in subsection (a) be readopted, the department or board must:

(1) consider readoption of that rule separately from the readoption rule described in subsection (a); and

(2) follow the procedure for adoption of administrative rules under IC 13-14-9 with respect to the rule.

SECTION 4. IC 13-20-22-2, AS AMENDED BY P.L.137-2007, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The state solid waste management fund is established to provide money for the following:

(1) Programs that provide grants and loans that provide education and promote the following:

(A) Recycling and the use of recycled materials.

(B) Waste reduction.

(C) Management of yard waste.

(2) Providing grants to implement household hazardous waste source reduction or recycling projects.

(3) Providing grants for household hazardous waste and

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1 conditionally exempting small quantity generator waste
2 collection, recycling, or disposal projects under IC 13-20-20.

3 (4) Payments by the department under IC 13-20-17.7-6.

4 **(5) Subject to subsection (g), providing grants and loans to**
5 **promote beneficial uses of technologies for the conversion of**
6 **solid waste into energy or another useful product.**

7 (b) The expenses of administering the fund shall be paid from
8 money in the fund.

9 (c) The sources of money for the fund are the following:

10 (1) All fees deposited into the fund under section 12(2) of this
11 chapter.

12 (2) Accrued interest and other investment earnings of the fund.

13 (3) Appropriations made by the general assembly.

14 (4) Gifts and donations from any person to the fund.

15 (5) Civil penalties imposed under IC 13-30-4 for violations of
16 IC 13-20-17.7 and proceeds received following a criminal
17 conviction in connection with a violation of IC 13-20-17.7.

18 (6) Subject to subsection (f), assets assigned and other
19 contributions made by persons.

20 (7) Transfers from the Indiana recycling promotion and assistance
21 fund under IC 4-23-5.5-14(i).

22 (8) Money credited to the fund from the environmental
23 management special fund under IC 13-14-12-1(c).

24 (d) The treasurer of state shall invest the money in the fund not
25 currently needed to meet the obligations of the fund in the same
26 manner as other public money may be invested.

27 (e) Money in the fund at the end of a state fiscal year does not revert
28 to the state general fund.

29 (f) Money in the fund resulting from assets assigned and other
30 contributions made under subsection (c)(6) may be used only by the
31 department of environmental management to make payments under
32 IC 13-20-17.7-6.

33 **(g) In providing grants and loans under subsection (a)(5), the**
34 **department shall give priority to technologies for the conversion of**
35 **waste tires into energy or another useful product only if the**
36 **balance in the waste tire management fund is insufficient, as**
37 **determined by the commissioner, to remove and dispose of one-half**
38 **(1/2) of the total number of waste tires located at tire sites in**
39 **Indiana that are not certified under IC 13-20-13-3.**

40 SECTION 5. IC 36-9-23-5, AS AMENDED BY P.L.1-2007,
41 SECTION 247, IS AMENDED TO READ AS FOLLOWS
42 [EFFECTIVE UPON PASSAGE]: Sec. 5. As used in sections 6 through

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36 37 of this chapter, "board" means:

- (1) the municipal works board; or
 - (2) if the municipality has transferred the powers and duties of the works board under section 3 of this chapter, the:
 - (A) sanitary board; or
 - (B) utility service board;
- to which those powers have been transferred.

SECTION 6. IC 36-9-23-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 25. (a) **Subject to section 37 of this chapter**, the municipal legislative body shall, by ordinance, establish just and equitable fees for the services rendered by the sewage works, and provide the dates on which the fees are due.

(b) Just and equitable fees are the fees required to maintain the sewage works in the sound physical and financial condition necessary to render adequate and efficient service. The fees must be sufficient to:

- (1) pay all expenses incidental to the operation of the works, including legal expenses, maintenance costs, operating charges, repairs, lease rentals, and interest charges on bonds or other obligations;
- (2) provide the sinking fund required by section 21 of this chapter;
- (3) provide adequate money to be used as working capital; and
- (4) provide adequate money for improving and replacing the works.

Fees established after notice and hearing under this chapter are presumed to be just and equitable.

(c) The fees are payable by the owner of each lot, parcel of real property, or building that:

- (1) is connected with the sewage works by or through any part of the municipal sewer system; or
- (2) uses or is served by the works.

Unless the municipal legislative body finds otherwise, the works are considered to benefit every lot, parcel of real property, or building connected or to be connected with the municipal sewer system as a result of construction work under the contract, and the fees shall be billed and collected accordingly.

(d) The municipal legislative body may use one (1) or more of the following factors to establish the fees:

- (1) A flat charge for each sewer connection.
- (2) The amount of water used on the property.
- (3) The number and size of water outlets on the property.
- (4) The amount, strength, or character of sewage discharged into

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the sewers.

(5) The size of sewer connections.

(6) Whether the property has been or will be required to pay separately for any part of the sewage works.

(7) Whether the property, although vacant or unimproved, is benefited by a local or lateral sewer because of the availability of that sewer. However, the owner must have been notified, by recorded covenants and restrictions or deed restrictions in the chain of title of his property, that a fee or assessment for sewer availability may be charged, and the fee may reflect only the capital cost of the sewer and not the cost of operation and maintenance of the sewage works.

(8) The cost of collecting, treating, and disposing of garbage in a sanitary manner, including equipment and wages.

(9) The amount of money sufficient to compensate the municipality for the property taxes that would be paid on the sewage works if the sewage works were privately owned.

(10) Any other factors the legislative body considers necessary.

Fees collected under subdivision (8) may be spent for that purpose only after compliance with all provisions of the ordinance authorizing the issuance of the revenue bonds for the sewage works. The board may transfer fees collected in lieu of taxes under subdivision (9) to the general fund of the municipality.

(e) The municipal legislative body may exercise reasonable discretion in adopting different schedules of fees, or making classifications in schedules of fees, based on variations in:

(1) the costs, including capital expenditures, of furnishing services to various classes of users or to various locations; or

(2) the number of users in various locations.

SECTION 7. IC 36-9-23-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 26. (a) After the introduction of the ordinance establishing fees under section 25 of this chapter, but before it is finally adopted, the municipal legislative body shall hold a public hearing at which users of the sewage works, owners of property served or to be served by the works, and other interested persons may be heard concerning the proposed fees. Notice of the hearing, setting forth the proposed schedule of fees, shall be:

(1) published in accordance with IC 5-3-1;

(2) mailed to owners of vacant or unimproved property if the ordinance includes a fee for sewer availability to vacant or unimproved property; and

(3) mailed to users of the sewage works located outside the

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municipality's corporate boundaries.

The notice may be mailed in any form so long as the notice of the hearing is conspicuous. The hearing may be adjourned from time to time.

(b) After the hearing, the municipal legislative body shall adopt the ordinance establishing the fees, either as originally introduced or as modified. A copy of the schedule of fees adopted shall be kept on file and available for public inspection in the offices of the board and the municipal clerk.

(c) **Subject to section 37 of this chapter**, the fees established for any class of users or property shall be extended to cover any additional property that is subsequently served and falls within the same class, without any hearing or notice.

(d) The municipal legislative body may change or readjust the fees in the same manner by which they were established.

(e) Fees collected under this chapter are considered revenues of the sewage works.

SECTION 8. IC 36-9-23-36 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 36. **(a) Except as provided in subsections (b) and (c)**, a municipality may exercise powers granted by this chapter in areas within ten (10) miles outside its corporate boundaries. ~~However, this~~

(b) The mileage limitation in subsection (a) does not apply to the provision of sewage treatment service for an entity that is described in section 16(b)(2) of this chapter.

(c) In an area referred to in subsection (a), a municipality may not:

(1) impose fees under this chapter; or

(2) otherwise exercise powers granted by this chapter;

to provide storm water management services to the area if the county provides storm water management services to the area under IC 8-1.5-5.

SECTION 9. IC 36-9-23-37 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 37. **(a) As used in this section:**

(1) "service" means:

(A) imposing fees; and

(B) otherwise exercising powers;

to provide storm water management services; and

(2) "storm water board" refers to a board defined in IC 8-1.5-5-2.

(b) This section applies only if actions of:

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1 (1) a board under section 36 of this chapter; and
2 (2) a storm water board under IC 8-1.5-5;
3 are pending at the same time to service the same area outside a
4 municipality's corporate boundaries.

5 (c) The board and the storm water board must negotiate the
6 adoption by the board and the storm water board of a
7 memorandum of understanding that permits only the board or
8 only the storm water board to service the area referred to in
9 subsection (b). Neither the board nor the storm water board may
10 service the area before a memorandum of understanding is
11 adopted under this subsection. The entity designated to service the
12 area in the memorandum of understanding may finalize the
13 entity's action referred to in subsection (b). The entity not
14 designated to service the area in the memorandum of
15 understanding must terminate the entity's action referred to in
16 subsection (b).

17 SECTION 10. An emergency is declared for this act.

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COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 43, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 4, strike "and" and insert "**stating**".

Page 3, line 8, strike "readopt" and insert "**consider readoption of**".

Page 3, line 15, after "submit the" insert "**readoption**".

Page 3, line 18, after "(2)" insert "**for one (1) or more of the rules proposed to be readopted as part of the readoption rule described in subsection (a),**".

Page 3, between lines 18 and 19, begin a new paragraph and insert:

"(d) If a person submits to the department or a board that has rulemaking authority under this title a written request stating a basis for the request during the first comment period that a particular rule that the department or board does not intend to readopt as part of the readoption rule described in subsection (a) be readopted, the department or board must:

(1) consider readoption of that rule separately from the readoption rule described in subsection (a); and

(2) follow the procedure for adoption of administrative rules under IC 13-14-9 with respect to the rule."

Page 3, line 36, after "product" insert ".".

Page 3, line 36, delete "by".

Page 3, delete line 37.

Page 4, line 24, delete "by incineration." and insert "**only if the balance in the waste tire management fund is insufficient, as determined by the commissioner, to remove and dispose of one-half (1/2) of the total number of waste tires located at tire sites in Indiana that are not certified under IC 13-20-13-3.**".

and when so amended that said bill do pass.

(Reference is to SB 43 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 9, Nays 0.

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